

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2010-27-T

IN RE:	Application of Share Care Transport,)	
	Incorporated for a Class C (Non-Emergency))	ORDER GRANTING
	Certificate of Public Convenience and)	CLASS C
	Necessity for Operation as a Motor Vehicle)	CERTIFICATE
	Carrier)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Share Care Transport, Incorporated, 313 Saint Andrews Lane, Myrtle Beach, South Carolina 29588 (the “Applicant”) for a Class C (Non-Emergency) Certificate of Public Convenience and Necessity to render motor passenger service as follows:

BETWEEN POINTS AND PLACES IN CHARLESTON, GEORGETOWN,
WILLIAMBURG, BERKELEY, MARION AND DILLON COUNTIES.

RESTRICTED TO: 8 PASSENGERS.

Petitions to Intervene were received in this matter on behalf of L.H. Transportation Services, Incorporated, (“L.H. Transportation”), and Pee Dee Regional Transport Authority (“PDRTA”). ATransportation, LLC (“ATransportation”) filed a letter protesting the Application.

ATransportation withdrew its Protest on or about February 11, 2010.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20(Supp. 2003) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of

persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (Supp. 2009) provides:

A motor vehicle carrier shall obtain a certificate from the Office of Regulatory Staff pursuant to the provisions of Article 3 of this chapter and pay the license fee required by Article 5 of this chapter before the motor vehicle carrier may: (1) transport persons or property for compensation on any improved public highway in this State; or (2) advertise as an operator for the transportation of persons or property for compensation on any improved public highway in this State.

3. 26 S.C. Code Ann. Regs. 103-102(3)(Supp. 2009) defines “Certificate of PC&N” as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

- 26 S.C. Code Ann. Regs. 103-102(6) (Supp. 2009) defines “Class C Charter Certificate” as

A Class C certificate required to be held by service provider engaged in passenger for hire transportation using any motor vehicle equipped to carry up to fifteen (15) passengers and accepting passengers exclusively on a pre-arranged basis and which remuneration is determined on an hourly basis. A Class C Charter Certificate shall be denominated “Class C-Charter.”

26 S.C. Regs. 103-102(20) (Supp. 2009) defines “Non-Emergency Vehicle” as

A vehicle that is used for providing, for a fee or charge, non-emergency transportation, patients in stable medical condition. “Non-Emergency Vehicle” includes “Wheelchair Van” but not taxicabs. “Non-Emergency Vehicle” shall not include vehicles owned by facilities that provide such transportation as described above without charging a separate fee for the transportation service.

26. S.C. Code Ann. Regs. 103-112 defines a “Class C Motor Carrier” as

a common carrier by motor vehicle of passengers, generally known as “taxi cabs,” “charter buses,” “charter limousine,” and “non-emergency vehicles,” which does not operate over regular routes or upon regular schedules, and which does not, in any way, solicit or receive patronage outside of the radius of two miles of the corporate limits of the city in which it is licensed to do business, except that upon such highways as are not served by a Class A or B motor carrier. A Class C motor carrier must obtain a Certificate of PC&N from the ORS after approval by the Commission, except “charter buses,” which must obtain a Charter Bus Certificate.

4. 26 S.C. Code Regs. 103-133 (Supp. 2009) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (4) as follows:

An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of passengers by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided however, if an intervenor shows or if the commission determines that the public convenience and necessity is already being served, the commission may deny the application. The following criteria should be used by the commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

a. FIT. The applicant must demonstrate or the commission determines that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S. safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant and that applicant is financially fit to do business as a certified carrier. The applicant should further certify that he is familiar

with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agree to operate in compliance with these statutes and regulations.

b. ABLE. The applicant should demonstrate that he has purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the commission's insurance requirements and the costs associated therewith.

c. WILLING. Having met the requirements as to “fit and able”, the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought. The applicant must demonstrate a willingness to comply with all commission regulations.

EVIDENCE OF RECORD

A hearing on the Application was held on February 25, 2010 at 10:30 p.m. and carried over until March 2, 2010 at 10:30 a.m. The Honorable Elizabeth B. Fleming presided. Present representing the Applicant was John J. Pringle, Jr. Appearing on behalf of the intervenor, PDRTA was Carrie A. Fox. Appearing on behalf of the Office of Regulatory Staff (“ORS”) was Jeffrey M. Nelson. Intervenor LH Transportation was not represented at the hearing, did not appear at the hearing, and presented no witnesses.

Testifying for the Applicant was Henry Sherald, its President and owner, and Carla Wessells-Ackley, Operations Consultant for the Applicant. Mr. Sherald testified regarding his business experience and role with the Applicant. Mr. Sherald also described his investment in the Applicant, and the additional sources of financing available to the Applicant. Mr. Sherald testified regarding the training and preparation that he and the Applicant had undertaken in order to prepare to perform the services sought in the Application. Mr. Sherald also testified that the Applicant would comply with all applicable statutes, Commission rules, and Orders.

Ms. Wessells-Ackley testified concerning the vehicles and equipment purchased by the Applicant in preparation for its provision of non-emergency transportation services (the “Services”). She testified generally regarding the non-emergency transportation business, the types of “trips” that the Applicant sought to provide, and the scope of authority sought by the Applicant. Ms. Wessells-Ackley further testified regarding the safety, insurance, and inspection requirements applicable to Share Care’s vehicles, drivers, equipment, and operations, and testified that Share Care met all such requirements and would do so on a going-forward basis if certified by the Commission. Ms. Wessells- Ackley testified further regarding a current demand for the Services in the counties for which Share Care seeks authority, and in particular one or more contracts under which Share Care intends to operate.

Officer Teeter testified on behalf of the ORS. Mr. Teeter testified regarding his inspection and audit of the Applicant’s vehicles, driver files, and equipment, and his review of the Applicant’s compliance with various licensing, training, inspection, and testing requirements. Mr. Teeter offered (and the Commission accepted without objection) the ORS Passenger Carrier Audit Report Form (“ORS Audit Report Form”) containing same as a hearing exhibit. As set out in the ORS Audit Report Form, “[a]ll PSC regulations were met and company passed inspection.” Mr. Teeter offered no concerns regarding the Applicant’s fitness or ability to provide the Services.

Testifying for PDRTA was Janice Baroody, its director. Ms. Baroody testified about PDRTA, its service area, the types of services it provides, the regulatory structure under which PDRTA provides certain non-emergency charter services, and her opinion

regarding whether the public convenience and necessity for the Services is currently being met.

FINDINGS OF FACT

After full consideration of the Application, the testimony and documentary evidence presented at the Hearing, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Share Care Transport, Incorporated, seeks authority to operate as provider of Class C – Non-Emergency Motor Vehicle services.
2. The Applicant is fit, willing, and able to provide and properly perform the Services which it seeks to provide. “Fitness” has been demonstrated since the record contains (1) a certification that the Applicant is familiar with the regulations and statutes governing for-hire motor carrier services; (2) evidence that there are no outstanding judgments or criminal convictions against the Applicant; and 3) the ORS Audit Report Form and testimony offered by ORS witness Teeter. “Able” was demonstrated by the evidence of record which reveals that Applicant has the present ability and the necessary vehicles and personnel to provide the Services, and has obtained insurance that meets the minimum requirements set by this Commission. The evidence of record, and particularly Mr. Sherald’s investment in the Applicant to date and the availability of additional capital, indicates that the Applicant possesses sufficient financial resources to conduct for-hire motor carrier operations in South Carolina. Moreover, “willingness” was demonstrated by the filing of the application and the testimony of the Applicant’s witnesses demonstrating the Applicant’s desire to provide these Services in South

Carolina. Neither the Intervenor nor the ORS provided any evidence or testimony contesting the fitness, willingness or ability of the Applicant to provide the Services, and this finding of fact is uncontested in the record.

3. PDRTA did not show, and this Commission does not otherwise find, that the public convenience and necessity is already being served. The testimony provided by PDRTA provided an insufficient basis for ruling in its favor. The witness for the Intervenor testified in broad and unspecific terms that the public convenience and necessity is currently being met by existing non-emergency transportation service providers.

4. As a threshold matter, PDRTA is not regulated by this Commission. As PDRTA's witness conceded, PDRTA receives federal and state funding in connection with its operations. The motor carriers subject to the jurisdiction of the Commission, by contrast, are privately funded entities. Thus, while PDRTA may not be legally foreclosed from intervening in a motor carrier proceeding before the Commission (a question the Commission need not undertake in order to decide this case), its unregulated and government-funded status at the very least calls into question whether the public convenience and necessity PDRTA describes is the same "public convenience and necessity" that this Commission is called upon to assess.

5. As another threshold matter, PDRTA did not offer any testimony or other evidence regarding the public convenience and necessity for the Services in Charleston, Berkeley, Georgetown, or Williamsburg counties. Ms. Baroody testified that PDRTA is operating only in Chesterfield, Marlboro, Florence, Darlington, Dillon, and Marion

Counties, and that it has operated only in those counties for almost two years. Therefore, there is no evidence in the record that the public convenience and necessity for the Services is currently being served in Charleston, Georgetown, Berkeley, or Williamsburg Counties.

6. With respect to Marion and Dillon Counties, we find that PDRTA did not offer any credible evidence that the public convenience and necessity is currently being served in those counties. Ms. Baroody offered general testimony regarding “empty seats” in a number of the PDRTA’s vehicles, and it is unclear from that testimony whether or not an additional provider of Services would harm PDRTA’s operations. Regardless of how that testimony is characterized; however, none of her testimony was specific to Marion or Dillon County.

7. Thus, not only do we find that PDRTA did not provide credible evidence that the Applicant’s services would threaten its operations, but also that there was no credible evidence that the public convenience and necessity is currently being served in any of the counties where the Applicant seeks to provide Services.

8. Moreover, assuming that allowing the Applicant to provide the authority it seeks herein would threaten PDRTA’s operations, the South Carolina Supreme Court has made clear that possible future economic harm resulting from increased competition, while relevant, is not, in and of itself, sufficient justification for denial of the application of a motor carrier applicant who has shown itself to be otherwise fit, willing and able to perform the services for which it seeks certification. *Welch Moving and Storage Co., Inc. v. Pub. Serv. Comm’n of South Carolina*, 301 S.C. 259, 391 S.E.2d 556 (1990)

(“*Welch*”). Like the carriers who opposed the applicant in *Welch*, PDRTA provided no “expert testimony or statistical surveys”, 301 S.C. 262, 391 S.E.2d 557, to support its contention that the public convenience and necessity is being served. On the contrary, as set forth above the PDRTA witness offered (at best) merely an opinion about the empty seats on its vehicles. The factual similarities between *Welch* and the instant Docket compel the Commission to apply the same reasoning and reach the same result here as did the South Carolina Supreme Court.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the Applicant has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Ann. Regs. 103-133.
2. The Commission does not conclude that the public convenience and necessity is already being served by existing Class C Non-Emergency Carriers.
3. Based on the conclusions above, that the Applicant has demonstrated that it meets the requirements of fit, willing and able, and that the public convenience and necessity is not already being served with respect to the services proposed by Applicant, the Commission concludes that a Class C (Non-Emergency) Certificate of Public Convenience and Necessity should be granted and that Applicant should be granted authority to perform Class C (Non-Emergency) services as specified in its Application.

The grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Share Care Transport, Incorporated for a Class C (Non-Emergency) Certificate of Public Convenience and Necessity is hereby approved.

2. That the Applicant file or cause to be filed, with the Office of Regulatory Staff (ORS) the proper license fees, proof of liability insurance (i.e. “Form E”), and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through R.103-241 (Supp. 2009) of the Commission’s Rules and Regulations for Motor Carriers and 23A S.C. Code Ann. Regs. 38-400 through 38-503 (Supp. 2009) of the Department of Public Safety’s Rules and Regulations for Motor Carriers, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That failure of the Applicant to either (1) complete the certification process by complying with the requirements of filing with the ORS proof of appropriate insurance and the payment of license fees and such other information required by law within 60 days of the date of this Order or (2) request and obtain from the Commission additional time to comply with the requirements stated above, may result in the authorization approval in this Order being revoked.

4. That upon compliance with the filing of information as required by S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs. Vol. 26 (Supp. 2009), as amended, a

Certificate shall be issued by the ORS to the Applicant authorizing the motor carrier services granted herein.

5. That prior to compliance with the above-referenced requirements regarding the filing of certain information with the ORS and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/

Elizabeth B. Fleming, Chairman

ATTEST:

/s/

John E. Howard, Vice Chairman

(SEAL)